

Consultation Response

Rural broadband and digital only services inquiry

June 2019



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Rural Affairs, Consumer Law and Competition Law Sub-committees welcome the opportunity to consider and respond to the Environment, Food and Rural Affairs Committee's inquiry on *Rural broadband and digital only services inquiry*¹. We have the following comments to put forward for consideration.

General comments

We consider that access to connectivity and digital services remains an issue for rural communities. Ofcom's Connected Nations 2017 Scotland report² highlights that "six percent of premises in Scotland still struggle to get decent broadband services"³. We consider that all premises in Scotland should have access to this level of broadband services. We note that improvements have been made in terms of the availability of superfast broadband⁴ and coverage of full fibre services in Scotland⁵. However, there remain areas where basic levels of coverage are not being provided.

While mobile voice services cover 87% of premises in Scotland, it is of concern that geographic voice and data coverage, in particular 4G coverage, still lags behind the rest of the UK⁶. We note the terms of *Realising Scotland's Full Potential in a Digital World: A Digital Strategy for Scotland*,⁷ in particular the commitment to ensure that all premises in Scotland have access to broadband speeds of at least 30 megabits per second by the end of 2021. This is commendable however we consider that the priority should be to ensure that all premises and individuals have access to a minimum basic level of service.

¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/news-parliament-2017/rural-broadband-inquiry-launch-17-19/>

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/108814/scotland-connected-nations-2017.pdf

³ *Ibid*, paragraph 1.2.

⁴ Defined as broadband services that deliver a download speed of at least 30Mbit/s.

⁵ Ofcom Connected Nations 2017 Scotland Report, paragraph 1.2.

⁶ *Ibid*.

⁷ <https://beta.gov.scot/publications/realising-scotlands-full-potential-digital-world-digital-strategy-scotland/pages/1/>

Consultation questions

1. What are the barriers to delivering superfast broadband and improved mobile phone coverage in rural areas at an affordable cost to consumers?

We note that Scotland's geography may be a barrier to delivery of such services, particularly in more remote and island areas. Lessons may be learned from other countries with similar geographical profiles, for example Iceland and other Scandinavian countries. There remain a number of areas which are not remote or particularly rural, yet in which there is limited broadband and mobile phone coverage. Sufficient investment will be required to improve services to an acceptable level.

In terms of competition matters, we consider internet access to be an essential facility, in the same way as household utilities or road and railway infrastructure. Fibre optic cabling presents the current equivalent in terms of physical infrastructure and we are therefore of the view that fibre optic cabling should be open to compulsory shared access for competitor providers. Consideration could be given to vesting this in a public undertaking.

The extension of superfast broadband and improved mobile phone coverage also presents an opportunity for new technologies to be considered. New technologies (which are not broadband services per se but offer a similar standard of service) may be able to provide effective and efficient solutions to the challenges faced and we therefore consider it worthwhile that development options are explored.

We have previously stated that we consider it unlikely that regulatory solutions alone will ensure the delivery of infrastructure to the most rural areas of the country. We are of the view that the use of subsidies may help to encourage investment in superfast broadband and improvement mobile phone services. Public funding may help to ensure equitable access to services across the country. Other EU member states facing similar difficulties to Scotland, including sparsely populated geographical areas, have required public funding to ensure widespread access to connectivity services.⁸ The use of subsidies and/or public funding may help to ensure that services can be provided at an affordable cost to consumers, however such funding requires to be carefully balanced with incentives for commercial investors and must be compliant with state aid rules.

2. Is enough being done to address the disparity in coverage and digital service provision between rural and urban areas? What is the impact of the urban-rural digital divide on rural communities?

See our answer to question 5.

⁸ For example, see Finland's *Broadband 2015 Project* - <https://www.viestintavirasto.fi/en/steeringandsupervision/broadband2015.html>

3. Is the current Universal Service Obligation (USO) adequate for the needs of rural communities and businesses and will it be effectively delivered? Given technological developments, including provision of 5G, will the USO provide the necessary level of connectivity for rural areas in the next decade?

We previously responded⁹ to the UK Government's consultation on Broadband Universal Service Obligations.¹⁰

At that point we stated concerns that the “universal service obligation” is not in fact intended to be universal and predicted that this have a particularly negative impact in a Scottish context where there are a higher proportion of remote rural communities than in other parts of the UK. We still consider that the service obligation should be truly universal to guard against the risks identified at question 5 below but are pleased to note that the “providers are required to assume and aggregate the level of local demand”, thereby bringing more houses below the threshold.¹¹

Furthermore, we consider that connectivity solutions should be technology neutral. While we recognise that there needs to be a balance with cost to ensure reach, we are aware that mobile networks with greater capability (such as 5G), could go further and faster to achieving genuinely universal coverage. This would be of significant benefit to rural communities.

In line with the policy considerations around access to justice, access to services, social inclusion and business necessity outlined in our answer to question 5, we are of the view that uniform pricing should be applied to provision of the service.

4. Are the Government's recent policy and funding announcements for improving digital connectivity adequate for rural areas, and how robust are the plans for delivery?

We have no comments on this question.

⁹ https://www.lawscot.org.uk/media/10569/cons_comp_rur_tech_lss-response-to-broadband-uso-consultation-on-design.pdf

¹⁰ <https://www.gov.uk/government/consultations/broadband-universal-service-obligation-consultation-on-design>

¹¹ <https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/broadband-uso-need-to-know>

5. How well do digital public services work in rural areas where there are poor internet connections? What support or alternatives are available for those in rural areas with poor or no connection to use digital public services and how effective is it?

There are a number of examples of public services which are increasingly moving towards digital platforms. This may give rise to difficulties for those in rural areas who have poor or limited internet access.

Access to justice in rural areas is of concern to us. In our response¹² to the Scottish Government's *Independent Strategic Legal Aid review* in 2017, we noted that independently commissioned research had identified a risk that people in rural areas who were eligible for legal aid would not be able to find solicitors to provide advice. We highlighted that this could result in a two-tier justice system. Where it is not possible to obtain advice in person easily, it is important that individuals have access to remote advice, and this requires suitable broadband and connectivity.

Courts and tribunal services are increasingly moving to online systems, for example employment tribunal cases are now almost exclusively online and criminal procedural courts are anticipated to move to digital systems in coming years. Individuals and businesses seeking access to justice or wishing to defend a claim made against them will therefore require a good connectivity. It is not only formal legal processes for seeking redress which rely on technology: many complaints mechanisms are handled through digital channels which can facilitate cheap and effective resolutions of disputes.

We are also concerned about wider social questions around inclusion where a number of aspects of day-to-day life rely upon internet connection and mobile phone coverage. This is not just a question of access to private goods and services. There are many aspects of daily life where online access is a necessity and some digital services – for example, online banking – may be more crucial to those in remote communities than those in urban areas. Access to cloud-based software is growing in popularity. In some circumstances, individuals face significantly higher costs to obtain documents in paper form than in electronic form. Although we recognise the resourcing reasons behind such measures, this is predicated on an assumption that stakeholders will have ready access to electronic information and the necessary equipment. This may not be the case due to physical geography and/or personal circumstances of individual users, over which individual users may have little or no control.

The move to the online environment is also evident in the field of compliance. Monthly reporting for companies uses an online system and HMRC's online filing system is the default option, requiring users to have a 'reasonable excuse' to use paper forms.¹³ Broadband access is therefore essential to businesses to meet their legal requirements. In addition, farmers are required to make claims for basic payment and other farming subsidy applications through online systems. This will be particularly prevalent within rural areas.

¹² <https://www.lawscot.org.uk/media/1179917/final-law-society-of-scotland-response-to-independent-strategic-legal-aid-review-call-for-evidence-aug-2017-corrected-.pdf>

¹³ <https://www.gov.uk/file-your-company-accounts-and-tax-return>

Without a reliable broadband connection, farmers could find themselves unable to access funding which is essential to maintain a viable business and they may suffer financially.

The growing transition to online platforms causes us concern in the field of compliance with the European Convention on Human Rights. We consider there to be potential for discrimination against certain individuals who may have limited or no access to online services, yet have no alternative means to access services offline or face higher costs for doing so. This is an important consideration in the provision of digital public services.

We have no comment to make in respect of available support or alternative options for those with poor or no internet connection.

For further information, please contact:

Alison McNab

Policy Team

Law Society of Scotland

DD: 0131 476 8109

AlisonMcNab@lawscot.org.uk